

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

November 12, 2010

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

**REGARDING: Request to Amend Conservation District Use Permit MA-3533
Wind Energy Generation Facility**

APPLICANT: Kaheawa Wind Power II LLC, c/o First Wind Energy, 810 Richards
Street, Suite 650, Honolulu, HI 96813-4714

LANDOWNER: Department of Land and Natural Resources, State of Hawai'i

LOCATION: Kaheawa Pastures, Ukumehame Ahupua'a, Lahaina District, Maui

TMK: (2) 4-8-001:001 & 3-6-001:014

AREA OF USE: 333 acres

SUBZONE: General

BACKGROUND

On August 12, 2010, the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) MA-3533 for the 21 megawatt (MW) Kaheawa Wind Power II Wind Generation Facility, at Ukumehame, Lahaina, Maui, TMK (2) 4-8-01:01 & 3-6-01:14.

The site was once a *kula manu*, or gathering place for birds prior to mass movements to other parts of Maui and Kaho'olawe. Recent studies have concluded that such mass migrations no longer occur, although some species continue to use the resources in the area. Concerns were raised regarding the project's potential impact on four endemic species: the 'a'o (*Puffinus newelli*, or Newell's shearwater), 'ua'u (*Pterodroma sandwichensis*, or Hawaiian petrel), nēnē (*Branta sandvicensis*), and 'Ōpe'ape'a (*Lasiurus cinereus semotus*, or Hawaiian hoary bat).

The applicant incorporated a number of measures designed to limit take. These include placing the turbines in two single rows rather than using a staggered array or multiple

rows; using monopole steel towers rather than lattice towers to reduce perching and nesting; utilizing a rotor with a rotational speed of 11 to 20 rpm to maximize rotor visibility; placing new power collection lines underground as far as practical, and fitting overhead lines with marker balls; using unguyed met towers rather than guyed met towers; and enforcing a speed limit of 10 mph on site.

In addition, based upon recommendations from the US Fish and Wildlife Service and the DLNR Division of Forestry and Wildlife, the applicant agreed to secure a Federal Incidental Take Permit and State Incidental Take License.

Condition 15 of the Permit thus reads:

The applicant will not initiate construction activities until it has obtained both a Federal Incidental Take Permit and State Incidental Take License.

PROPOSED MODIFICATION

OCCL has received the following request from the permit holder to modify the CDUP:

We hereby request that Condition 15 be modified to read as follows, or similar:

*15. The applicant will not **erect wind turbines** until it has obtained both a Federal Incidental Take Permit and State Incidental Take License.*

This modification is requested in order to allow site preparation work to begin by December 1, 2010 so that the project can qualify for the federal Investment Tax Credit (ITC) Grant Program. Site preparation work must be well underway before the end of 2010 in order for the project to qualify under the program. Qualifying for this program is critical to the project's commercial viability.

The Federal Incidental Take Permit and the State Incidental Take License are both in the very advanced stages of review, and authorizations are expected to be received by January, 2011. The project's Habitat Conservation Plan (HCP) is in final draft form, and has been approved as final by the Endangered Species Recovery Committee (ESRC). At the state level the HCP has completed public review and is ready to go to the Board of Land and Natural Resources for final approval. At the federal level the USFWS is preparing the draft for publication in the Federal Register, along with an Environmental Assessment (EA) and Biological Opinion (BO). USFWS needs to complete these steps before the permit can be issued, and the federal permit must be issued in order for DOFAW to proceed to the Board. Although these steps may all be completed sooner than January, they are not expected to be completed in time for a December 1 start of construction.

We have consulted with DOFAW and the USFWS and have been advised that the risk to endangered species is primarily associated with the turbines themselves. According to our current construction schedule, if site preparation begins in December as proposed, erection of the turbines would not occur until late March or early April. Although nene occur in the area and may be

encountered during site preparation, our construction protocols include daily monitoring to ensure no birds are in the area where work is occurring, and stop-work and buffer provisions in the event that nesting birds are discovered.

Modifying the permit condition as proposed will allow initial site work for this important renewable energy project to move forward with minimal risk to listed species, while at the same time ensuring that all permits and conservation measures are in full effect before turbines are erected.

DISCUSSION

OCCL received no objections to the original proposal from the community or other agencies.

OCCL consulted with both DOFAW and US Fish and Wildlife on the proposed modification. Both confirmed that the take permits were proceeding accordingly, and that the primary risk of take was the from the turbines themselves.

DOFAW noted that there is a potential increased risk of take from vehicle traffic, and stressed that the following current conditions of the permit needed to be adhered to:

7 All representations relative to mitigation set forth in the Environmental Impact Statement and Conservation District Use Application are incorporated as conditions of the permit, including but not limited to: (g). Following or expanding the KWP I mitigation program regarding minimizing the take of protected species;

13. Should nēnē nests be discovered during construction the applicant will notify DLNR and USFWS, and curtail or modify activities until appropriate measures are taken.

OCCL also consulted with DLNR's Historic Preservation Division (HPD), who noted that a qualified archaeologist was required to be on site during construction. The site preparation activities would trigger this requirement where they involve ground disturbances.

The applicant is not proposing any modifications to the proposal beyond being able to initiate "pre-construction" and "site preparation" prior to securing the take permits. OCCL concurs that the main risk of take is from the turbines themselves, and has no objections to amending the permit as requested.

OCCL notes that if the modification is approved by the Board, the permit holder will need to begin implementation of all best management practices, mitigation measures, and traffic control plans as called for in the CDUP.

As such, staff recommends as follows,

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE the modification to Condition 15 of Conservation District Use Permit (CDUP) MA-3533 for the Kaheawa Wind Power II, LLC wind generation facility at Ukumehame, Lahaina District, Maui, TMK (2) 4-8-001:001 and 3-6-001:014, so that Condition 15 now reads:

The applicant will not erect wind turbines until it has obtained both a Federal Incidental Take Permit and State Incidental Take License.

Respectfully submitted,



Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



**Laura H. Thielen, Chairperson
Board of Land and Natural Resources**